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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,156	12/12/2003	Bertrand Lion	LOREAL 3.0-002; OA02420/U	3506
530	7590	04/18/2006	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			ROGERS, JAMES WILLIAM	
			ART UNIT	PAPER NUMBER
			1618	

DATE MAILED: 04/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-4,10-22 drawn to a dispersion of particles in a non-aqueous non-silicone organic medium comprising at least one acrylic monomer and at least one carbon-based macromolecule, classified in class 424, subclass 070.16.
- II. Claims 5-9, drawn to a dispersion of particles in a non-aqueous non-silicone organic medium comprising at least one acrylic monomer and non-acrylic vinyl monomer and at least one carbon-based macromolecule, classified in class 525, subclass 73.
- III. Claims 23-27, drawn to a cosmetic or pharmaceutical composition, classified in class 514, subclass 772.4.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are directed to a dispersion of particles. The related inventions are distinct if the inventions as claimed do not overlap in scope, i.e., are mutually exclusive; the inventions as claimed are not obvious variants; and the inventions as claimed are either not capable of use together or can have a materially different design, mode of operation, function, or effect. See MPEP § 806.05(j). In the instant case, the two inventions have a materially different design for instance invention I comprises at least one acrylic monomer and at least one carbon-based macromolecule while

Art Unit: 1618

invention II also comprises a non-acrylic vinyl monomer not required in invention I thus requiring a separate search.

Inventions I and II are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the process for using the product can be performed with another materially different material, for instance cosmetics are very well known in the art and obviously there are other compositions that comprise them besides the applicants claimed invention.

Inventions I and III are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the process for using the product can be performed with another materially different material, for instance cosmetics are very well known in the art and obviously there are other compositions that comprise them besides the applicants claimed invention.

Claims 3 and 4 are generic to the following disclosed patentably distinct species: the different acrylic monomers listed in formula (i), (ii) and (iii) and in claim 4. The species are independent or distinct because each of the above can be used for a different pharmaceutical or cosmetic product that would require a separate search by

Art Unit: 1618

the examiner. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Claims 6-9 are generic to the following disclosed patentably distinct species: the different non-acrylic vinyl monomers listed in formulas i,ii and iii and further differentiated and listed in claims 7-9. The species are independent or distinct because each of the above can be used for a different pharmaceutical or cosmetic product which would require a separate search by the examiner. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Claims 10,13-16 are generic to the following disclosed patentably distinct species: the carbon macromolecule, several types are listed in claims 10,13-16. The species are independent or distinct because each of the above can be used for a different pharmaceutical or cosmetic product which would require a separate search by the examiner. Applicant is required under 35 U.S.C. 121 to elect a single disclosed

Art Unit: 1618

species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention and/or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions and/or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the

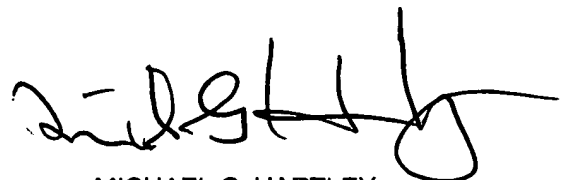
Art Unit: 1618

inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James W. Rogers whose telephone number is (571) 272-7838. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Hartley can be reached on (571) 272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Michael G. Hartley", with a stylized flourish at the end.

MICHAEL G. HARTLEY
SUPERVISORY PATENT EXAMINER